

MAXIMO B. ESTRELLA, PETITIONER-APPELLANT, VS. VICENTE ORENDAIN, JR. AND ILUMINADA P. QUILOP, RESPONDENTS-APPELLEES.

G.R. No. L-19611. February 27, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the decision of the Court of First Instance of Rizal in Civil Case No. 6653, dated November 9, 1961, dismissing appellant Maximo B. Estrella's petition for certiorari and prohibition for lack of merit and lifting the writ of preliminary injunction previously issued therein.

The facts are succinctly stated in the appealed decision thus:

"From the facts alleged in the pleadings and not controverted it appears that respondent Iluminada P. Quilop filed with the Provincial Fiscal a complaint charging the petitioner with falsification of a public document. It was alleged that petitioner who is the mayor of Makati, Rizal, made it appear in a marriage certificate that one Rosalina Quilop also known as Lina Quilop, daughter of said respondent, had contracted marriage with one Armando Reyes before him in Makati, when the truth is that said Rosalina Quilop could not have appeared before the petitioner in Makati to be married because she was then confined at the Welfare House for Women and Girls at 10 Apo Street, Quezon City, under the care of the Social Welfare Administration from November 27, 1960 to December 10, 1960, inclusive. The gist of the offense, therefore, is that the petitioner had falsified the alleged marriage certificate by falsely stating therein that Rosalina Quilop had appeared before him in a marriage ceremony.

"The Fiscal, however, refused to take action on the complaint and to file the corresponding information against petitioner on the ground that since no action for declaration of the nullity of the marriage had been filed, there can be no criminal liability arising from its solemnization.

"The offended party, faced with this refusal or failure of the Fiscal to file an information against the petitioner, then petitioned the Secretary of Justice to appoint a special fiscal to conduct the preliminary investigation and to file thereafter the information against petitioner in court. The Secretary of Justice granted the request and appointed the respondent Special Prosecutor Vicente Orendain, Jr., to conduct the preliminary investigation. The petitioner then filed this petition for prohibition with preliminary injunction to restrain the special investigator from proceeding with the investigation."

Upon these facts, the court a quo rendered the appealed decision, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the Court holds the petition for prohibition to be without merit and so hereby dismisses the same with costs against the petitioner. The writ of preliminary injunction previously issued in this case is hereby ordered lifted."

In his brief, appellant has assigned two errors allegedly committed by the lower court, to wit:

"I

"THE TRIAL COURT ERRED IN DECLAR-ING THAT THE PROVINCIAL FISCAL OF RI-ZAL WAS 'UNABLE' OR HAD 'FAILED' TO PERFORM HIS OFFICIAL DUTY; AND IN UPHOLDING THE VALIDITY AND PROPRIETY OF THE APPOINTMENT OF RESPONDENT ORENDAIN, JR. UNDER SECTION 1679 OF THE REVISED ADMINISTRATIVE CODE AS ACTING PROVINCIAL FISCAL OF RIZAL TO INVESTI-GATE I. S. No. 5482.

"II

"THE TRIAL COURT ERRED IN ASSUMING WITHOUT EVIDENCE HAVING BEEN PRESENTED, THAT ROSALINA QUILOP DID NOT APPEAR BE-FORE THE PETITIONER-APPELLANT DURING THE MARRIAGE CEREMONY, THUS ARRIVING AT THE CONCLUSION THAT A DETERMINATION OF THE VALIDITY OF THE MARRIAGE IS NOT A PREJUDICIAL QUESTION SINCE THE MAR-RIAGE, BEING (VOID) AB INITIO MAY BE AT-TACKED COLLATERALLY."

The legal provision involved herein is Section 1679 of the Revised Administrative Code. It provides:

"Section 1679. When Secretary of Justice shall appoint acting provincial fiscal.- When a provincial fiscal shall be disqualified by personal interest to act in a particular case or when for any reason he shall be unable, or shall fail to discharge any of the duties of his position, the Secretary of Justice shall appoint an acting provincial fiscal, who shall discharge all the duties of the regular provincial fiscal which the latter shall fail or be unable to perform. x x x"

It is appellant's position that there is absolute absence in this case of any of the exceptional instances specified in the above section which could have justi-fied the appointment of Orendain, Jr. as acting provin-cial fiscal of Rizal to conduct the investigation and prosecution of the charge in question. Appellees maintain, on the other hand, that there is here a failure or inability, although legal in nature, on the part of the provincial fiscal of Rizal to perform his duties, within the contemplation of said section. Paraphrasing the lo-wer court, appellees contend that such failure or inability of the provincial fiscal of Rizal consists of his refusal to proceed with the investigation because of his "erroneous belief that an action for the declaration of nullity of the marriage is necessary before any criminal action can be instituted." In these premises, the appeal is devoid of merit.

There is no question that neither Fiscal Nicolas, the provincial fiscal, nor Fiscal Melendrez, the assis-tant provincial fiscal in charge of appellant's case, is disqualified by reason of personal interest to act. The only issue is whether or not the refusal of the Pro-vincial Fiscal of Rizal to investigate appellant, because, as already stated, he believes there is a preju-dicial question that must first be resolved by the com-petent court, can be considered as an instance wherein, the fiscal "shall be unable, or shall fail, to discharge any of the duties of his position" within the contemplation of above-quoted Section 1679.

The question presented is not entirely new. This Court already had occasion way back in 1958 to sustain the action of the Secretary of Justice under circumstan-ces similar to those in the case at bar, at least, as regards the principle involved. In Assistant Provincial Fiscal of Bataan vs. Dollete, 103 Phil. 914, wherein the factual setting was as follows:

"The facts are not disputed. In Criminal Case No. 278 of the Justice of the Peace Court of Dinalupihan, Bataan, several persons were charged with 'Offending the Religious Feeling', under Article 133 of the Revised Penal Code. It was alleged in the complaint filed by the Chief of Police, that while devotees of the Iglesia Ni Cristo were holding ceremony in a certain house in Dinalupihan, the accused stopped in front thereof, made unnecessary noise, and shouted derogatory words against the Iglesia ni Cristo and its members, and even stoned the house. The Justice of the Peace conducted the preliminary investigation and reduced to writing the

entire proceedings, wherein he made his findings of fact, after which he elevated the case to the Court of First Instance of Bataan, being of the opinion that 'the crime has in fact been committed and that the accused are probably guilty thereof'.

"Upon receiving the record of the case, which was docketed in the Court of First Instance as Criminal Case No. 5046, petitioner Assistant Provincial Fiscal summoned the offended parties and prosecution witnesses who were represented by a private prosecutor, to appear before him and testify for the purpose of gathering the necessary evidence and to convince himself of the sufficiency thereof, before going ahead with the prosecution. The offended parties and the private prosecutor appeared, but declined to give testimony, contending that said Assistant Provincial Fiscal had no right to require them to do so, but that they were reserving their testimonies when the case was tried before the Court of First Instance. The petitioner, considering the attitude of the offended parties, filed a motion for dismissal of the case. Said motion was opposed by the private prosecutor. It was set for hearing, later actually heard, after which respondent Judge issued the order subject of the present petition for certiorari, not only denying said motion for dismissal, but ordering petitioner to file the corresponding information. After failing to secure a re-consideration of the said order, petitioner tried to appeal said order, but the appeal was denied by respondent Judge on the ground that it was a mere interlocutory order and consequently, not appealable. Hence this petition for certiorari." (pp. 916-917, 103 Phil. 914-920)

this Court held:

"What the petitioner should have done was to advise respondent Judge of the attitude and conduct of the offended parties and to request that they be ordered to submit to an investigation by him. On his part, respondent Judge had the right to deny the motion for dismissal. His action on similar motions is discretionary. He may grant the motion to dismiss or deny the same. In the present case, he denied the motion to dismiss on the ground that judging from the record of the case in the Justice of the Peace Court, wherein the proceedings were reduced in writing, there was sufficient evidence to sustain the prosecution. In this, respondent Judge was right. As to the right of a Judge to deny a motion for dismissal of a criminal case, we said in *U. S. vs. Barredo*, supra:

'Upon a motion of the provincial fiscal to dismiss a complaint upon which an accused person has been remanded for trial by a justice of the peace, it rests in the sound discretion of the judge whether to accede to such motion or not. Ordinarily of course he will dismiss the action in accordance with the suggestion of an experienced fiscal who has personally investigated the facts. But if he is not satisfied with the reason assigned by the fiscal, or if it appears to him from the record of the proceedings in the court of the justice of the peace, or as a result of information furnished by the private prosecutor, or otherwise, that the case should not be dismissed, he may deny the motion.'

"But there was no need for respondent Judge in his order denying the motion for dismissal, to direct the Fiscal (petitioner) to file the information within five days. The denial of the motion to dismiss implied the prosecution of the case, although not necessarily by the same fiscal who moved for dismissal. It is rather embarrassing for a prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion, he does not have the necessary evidence to secure conviction, or he is not convinced of the merits of the case. Now, if the Assistant Provincial Fiscal fails or refuses to file said information within a reasonable time, then either the offended parties or the court could invoke Section 1679 of the Revised Administrative Code, so that the Department of Justice could designate one to act as Provincial Fiscal and file the corresponding complaint or information." (pp. 918-919, *Ibid.*)

In another case decided in the same month of May, 1958, *Pañgan et al., vs. Pasicolan*, G.R. No. L-12577, May 19, 1958, what happened was that a complaint for forcible abduction was filed in the JP Court of Mexico, Pangasinana, against three persons - Alberto Pañgan, Arsenio Pabalan, Jr., and Teofilo Dizon. After the required

pre-liminary examination and investigation, the JP forwarded the case to the CFI of Pampanga for further proceedings. In the CFI, the provincial fiscal reinvestigated the case and finding no sufficient evidence against accused Pañgan and Pabalan, Jr., he filed a motion for dismissal of the case as to them. The CFI granted the fiscal's motion and accordingly, dismissed the case against Pañgan and Paba-lan, Jr. Subsequently, on motion of the complainant, the CFI reconsidered its dismissal order, set it aside and thereafter set the motion for dismissal filed by the fis-cal for hearing on June 27, 1957. In a petition for certiorari instituted in this Court, it was ruled that:

“x x x The remedy of the of-fended party is to lodge a new complaint against petitioners (Pañgan and Pabalan, Jr.) either before the justice of the peace court having jurisdiction over the case, or with the provincial fiscal, and have a new examination conducted as re-quired by law. In case the provincial fiscal should fail or refuse to act even when there is sufficient evidence on which action may be taken, the offended party may take up the matter with the Secretary of Justice who may then take such measures as may be necessary in the interest of justice under Section 1679 of the Revised Administrative Code.”

As may be noted, the thrust of the above rulings is that the inability or failure of a fiscal to perform his duties contemplated in the provision in question is not limited to physical inability or failure, as appellant would want to be done. This is as it should be. Although We have said in *Vda. de Bagatua vs. Revilla and Lombos*, 104 Phil. 392, that:

"The Rules of Court also specifi-cally provide that all criminal actions, either commenced by complaint or infor-mation, shall be prosecuted under the direction and control of the fiscal (Sec-tion 4, Rule 106, Rules of Court), and from these legal mandates springs the principle that where the fiscal, after conducting a preliminary investigation is convinced that the evidence is insuf-ficient to establish, at least prima facie, the guilt of the accused, he has the perfect authority to dismiss the same (See *Gonzales vs. Court of First In-stance of Bulacan*, 63 Phil. 846; *People vs. Orias*, 65 Phil., 744; *People vs. Natoza*, 100 Phil., 533; 53 Off. Gaz [22] 8099). Under the aforesaid ruling, the fiscal or the city attorney, as prosecu-ting officer, is under no compulsion to file the corresponding information based upon a complaint, where he is not convinced that the evidence gathered or presented would warrant the filing of an action in court. It is true that this authority in-volves the exercise of discretion to a wide latitude and while it may invite the commission of abuses, yet it must also be recognized that necessity demands that prosecuting officers should be given such authority if we are to avoid the courts from being flooded with cases of doubtful merit or to unduly compel the fiscals to work against their convictions. It may be stated in this connection, that although prosecuting officers under the power vested upon them by law not only have the au-thority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed with-in the jurisdiction of their offices, they are likewise bound by their oath of office to protect innocent persons from groundless, false or malicious prosecu-tion. And since as lawyers they have sworn not to aid or consent to any un-lawful suit, the respondents would cer-tainly commit a serious dereliction of duty by prosecuting any person whom they do not believe to have committed the of-fense he was charged with by an alleged offended party, or when the evidence available is not, in their opinion, suffi-cient to warrant the conviction of the accused. Of course, the power of the City Attorney or prosecuting fiscal in connection with the filing and prosecution of criminal charges in court is not altogether absolute; but the remedy is not that of mandamus but the filing with the proper authorities or court of cri-minal or administrative charges if the alleged offended parties believe that the former maliciously refrained from instituting actions for the punishment of violators of the law (Article 208, Re-vised Penal Code)." (At pp. 395-396)

and in *Maddela vs. Aquino*, 104 Phil. 433, that:

"In the case of *Guiao vs. Figueroa*, 94 Phil., 1018; 50 Off. Gaz., 4828, we said that the law makes it the duty of prosecuting officers 'to file the char-ges against whomsoever the evidence may show to be responsible for an offense.' But we also there said that this does not mean that prosecuting officers shall have no discretion in the

matter, for where the law demands that all persons who appear responsible for an offense shall be charged in the information, it also implies that those against whom no sufficient evidence of guilt exists are not to be included in the charge; and, needless to say, the determination of whether or not there is, as against any person, sufficient evidence of guilt to warrant his prosecution necessarily involves the exercise of discretion." (At pp. 435-436)

and, further, in *Zulueta v. Nicolas*, 102 Phil. 944, We held that:

"The present action is based on article 27 of the new Civil Code, which provides that 'any person suffering material or moral loss because a public servant or employee refuses or neglects without just cause, to perform his official duty may file an action for damages and other relief against the latter'. But as we said in *Bagalay vs. Ursal*, (95 Phil. 473) 50 Off. Gaz. 4231, this article 'contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty'. Refusal of the fiscal to prosecute when after an investigation he finds no sufficient evidence to establish a prima facie case is not a refusal, without just cause, to perform an official duty. The fiscal has for sure the legal duty to prosecute crimes where there is enough evidence to justify such action. But it is equally his duty not to prosecute when after an investigation he has become convinced that the evidence available is not enough to establish a prima facie case. The fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a prima facie case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of the corresponding information and, having control of the prosecution of a criminal case, the fiscal cannot be subjected to dictation from the offended party (*People vs. Liggayu, et al.*, 97 Phil. 865, 51 Off. Gaz., 5644; *People vs. Natoza*, 100 Phil., 533, 53 Off. Gaz., 8099). Having legal cause to refrain from filing an information against the persons whom the herein plaintiff wants him to charge with libel, the defendant fiscal cannot be said to have refused or neglected without just cause to perform his official duty. On the contrary, it would appear that he performed it." (p. 946)

nowhere in these decisions did We hold that the refusal or failure of a fiscal to investigate and file the corresponding information in a criminal case filed with him ends the case once and for all and that the offended party has thereafter no remedy whatsoever to prosecute the guilty party criminally. Indeed, in a later case, We made it clear that:

"There is nothing in the law which grants to a provincial fiscal exclusive right to investigate a charge that is submitted to him for action. Of course, it is his duty under the law to undertake the investigation during the period his situation may permit. But when he is guilty of inaction or acts in a manner that may jeopardize the right of a complainant or offended party, there is nothing that may prevent the latter from taking action to protect his right. To hold otherwise would place his fate at the mercy of the prosecuting official. Such is the situation of respondent Sagales. He took the action he deemed proper so that his grievance against his offenders may not remain without vindication by the lapse of time. For this solicitude, he cannot be blamed. x x x." (*De la Cruz vs. Sagales*, 107 Phil. 673, 675.)

Importantly, it must be borne in mind that while it is true that a fiscal in exercising his discretion as to whether or not to prosecute somebody for an offense performs a quasi-judicial act, the functions that he discharges as an officer of the government are basically executive. He belongs to the executive department rather than to the judiciary. If indeed, in some instances, his salary is paid by the corresponding local governments, he does not thereby become a part thereof, for he is always within the ambit of the national authority when it comes to the supervision and control of his office, powers and functions. As a matter of fact, Section 83 of the Revised Administrative Code places him under the "general supervision and control" of the Department of Justice together with other prosecuting officers and under Section 74 of the same Code, the Secretary of Justice as "Department Secretary shall assume the burden and responsibility of all activities of the Government under his control and supervision." (*Uichangco vs. Secretary of Agriculture and Natural Resources, et al.*, L-17328, March

30, 1963, 7 SCRA 547) Consequently, the constitutional power of the President of control of all executive departments, bureaus or offices (Sec. 10, Art. VII, Constitution of the Philippines) should be considered as embracing his office. Withal, the prosecution of crimes is part of the President's duty to "take care that the laws be faithfully executed" (Id.) and the Secretary of Justice is, by the nature of his office, the principal alter ego of the President in the performance of such duty, (Villena vs. Secretary of Interior, 67 Phil. 451) whereas the working arms of the Secretary in this respect are the fiscals and other prosecuting officers. On the other hand, Section 79(c) of the Revised Administrative Code defines the extent of a department secretary's powers in the premises this wise:

"Section 79(c). Power of direction and supervision.- The Department Head shall have direct control, direction, and supervision over all bureaus and offices under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decisions of the chief of said bureaus or offices when advisable in the public interest."

In Mondano vs. Silvosa, 97 Phil. 143, We explained that the import of this provision is that the power of control therein contemplated "means the power (of the department head) to alter, modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter". In Pelaez vs. Auditor General, L-23825, December 24, 1965, 15 SCRA 569, our learned present Chief Justice made it plain that under Section 10, Article VII of the Constitution, cited above, "the power of control implies the right of the President (and, naturally, of his alter ego) to interfere in the exercise of such discretion as may be vested by law in the officers of the executive departments, bureaus, or offices of the national government, as well as to act in lieu of such officers." In fact, Section 37 of Act 4007, spells out this power in these precise terms: "The provisions of the existing law to the contrary notwithstanding, whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify or revoke any decision or action of said chief of bureau, office, division or service." Accordingly, that section 83 confers upon the Secretary only "general supervision and control" may not be construed as limiting or in any way diminishing the pervasiveness of the Secretary's power of control under Sec. 79(c) which is constitutionally based, since he acts also as alter ego of the President.

It is in the light of these legal provisions and judicially settled propositions that Section 1679 must be understood. Actually, this provision applies the principle of control, which We said above reaches the fiscal, in a milder way that gives due consideration to his sensibilities and the fact that the nature of the functions he performs, albeit they are basically executive, have some taints of judicial hue. It is seemingly a reconciliation between the need for national superintendence in order to insure the President's compliance with his duty relative to the faithful execution of the laws, on the one hand, and the due recognition that must be given to possible bona fide difference of views between the fiscal and his superiors which will not necessitate the surrender of his conviction by the fiscal. Thus, no compulsion is allowed to be practiced on him to make him act in a distinct manner, whether to prosecute or not to prosecute,[1] and instead, he is permitted to maintain his opinion and conviction, reserving only to the Secretary, in any appropriate case when the latter believes public interest impels that a different course of action should be taken, to temporarily relieve the fiscal of the duty to act by designating somebody else to take his place solely and only for the purposes of such particular case.

As a matter of fact, it is not alone by Section 1679 that the fiscal's place in the prosecution of crimes vis-a-vis the Secretary of Justice is statutorily defined, even if not very directly. Section 1686 of the Revised Administrative Code complements the Secretary's authority under Section 1679 by providing that:

"Section 1686. Additional counsel to assist fiscal. - The Secretary of Justice may appoint any lawyer in the

government service, or a competent person not in the public service, temporarily to assist a fiscal or prosecuting attorney in the discharge of his duties, and with the same authority therein as might be exercised by the Solicitor General: Provided, That if the person to be appointed in the public service is outside the jurisdiction of the Department of Justice, such appointment may only be made with the consent of the department head concerned."

So also does Section 3 of Republic Act 3783, as amended and/or inserted by Republic Act 3184 approved on September 8, 1967, as it provides that:

"Sec. 3. The Chief State Prosecutor, the Assistant Chief State Prosecutors, the Senior State Prosecutors, the State Prosecutors, the District State Prosecutors, as well as other prosecuting attorneys assigned in the interest of the public service to the Prosecution Staff, shall have the same powers as provincial or city fiscals as provided by law: Provided, That said prosecutors shall only assist or collaborate with the provincial or city fiscal, unless otherwise expressly directed and authorized by the Secretary of Justice.

"The Chief State Prosecutor, the Assistant Chief State Prosecutors, the Senior State Prosecutors, and the State Prosecutors shall also prosecute deportation cases, investigate administrative charges against fiscals, and perform such other duties as may be assigned to them by the Secretary of Justice in the interest of the public service."

In *People vs. Henderson*, 105 Phil. 859, this Court set forth the scope of Section 1686 thus:

"The question is not new. We have held in *People vs. Dinglasan* (77 Phil., 635) that a lawyer appointed by the Secretary of Justice, pursuant to section 1686 of the Revised Administrative Code, as amended, to assist the City Fiscal, is authorized to sign informations, make investigations and conduct prosecutions. This lawyer does not need to secure the consent of the corresponding Fiscal to start a prosecution. In fact, it is not a secret that the power in said section has often been exercised by the Department of Justice, whenever it did not see eye to eye with the Fiscal on certain matters involving offenses and/or prosecutions." (p. 865)

This definition was reiterated in *Secretary of Justice vs. Maglanoc*, L-19600, July 19, 1967, 20 SCRA 683.

As thus defined, it is obvious that the duties and powers of persons designated under Section 1686 and, no doubt, of the prosecutors directed and authorized by the Secretary under Section 3 of Republic Act 3783 enacted under Republic Act 5184 are no more no less than what We said in *Siazon vs. Hon. Judge of the Court of First Instance of Cotabato*, L-29354, January 27, 1969, 26 SCRA 664, are those of the persons designated under Section 1679. In *Siazon*, We held:

"Clearly, what is contemplated in the above-quoted provision is not a prosecution under the joint responsibility of the regular provincial fiscal and the designee of the Secretary of Justice, but one under the sole supervision of the latter. It provides for a complete take over by the designated fiscal of 'all the duties' ordinarily discharged by the regular fiscal and which the latter shall be unable to perform." (pp. 671--672)

We believe that this arrangement serves public interest best and is in consonance with sound principles in the prosecution of offenses. It places ultimate responsibility as to a matter of such national interest as the prosecution of crimes exactly where it properly belongs. We see no reason why the actuations of fiscals should not be subject to review by higher authorities when the actuations and exercise of discretion and judgment by all other subordinate officials in the government service are appealable to their administrative superiors and even decisions of judges of courts lower than the Supreme Court, including justices of the Court of Appeals, are open to scrutiny and modification or reversal by either the Court of Appeals or this Court. There is nothing so singularly sacrosanct in the position of a provincial or city fiscal as to make him absolute sovereign of his domain. Happily, under the procedure designed by the law, he does not have to surrender his views and judgment, even if he has to allow the demands of the social order to be pursued, so that it may never be said

that criminal justice in this country is entirely and exclusively within the control of fiscals, who, it must be admitted, are not yet anywhere near the top of the governmental hierarchy. Needless to say, any legislative attempt to impair or detract from the Secretary's authority, as herein-above defined, over city and provincial fiscals by confining the same to "general administrative supervision" or otherwise by means of any description of similar import cannot stand as it would be vulnerable to the attack of invalidity, since such limitation would of necessity have the effect of downgrading the President's constitutional prerogative of control, exercised thru the Secretary of Justice as already defined and delineated in emphatic terms by this Court in the precedent cases above cited. Indeed, why should any fiscal have the same degree of independence from the Executive as the judges who belong to another department of the government?

In arriving at these conclusions, We are not overlooking the ruling of this Court in the case of *Salcedo vs. Liwag*, supra. As stated in the decision itself, the facts of that case were as follows:

"It appears that petitioner was the one assigned by his chief to investigate the incident involving Sgt. Andres A. Lopez wherein he was allegedly handcuffed and manhandled while performing guard duty as a result of which, because of sufficient evidence he gathered, he filed against Lt. Romeo M. Reciña and companions three informations before the Justice of the Peace Court of Jolo, province of Sulu. Apparently these informations were dismissed without the intervention of petitioner, and so he later refiled them. Then a series of postponements ensued at the instance of counsel of the accused and in the process many attempts were made, not only on the part of the accused, but even on the part of certain provincial and national officials, to have petitioner relieved from the prosecution on the alleged ground that he has taken an unusual interest in the conviction of Lt. Reciña because of a supposed rivalry over a woman. He refused time and again to yield the prosecution of the cases even in defiance of superior orders claiming that since he has investigated and taken action on the incident in question and the cases were already in the process of trial before the Justice of the Peace Court of Jolo he should be given the power and authority to continue the prosecution to its final termination unless it be proven that he is disqualified to act by our Rules of Court (Section 13, Rule 115 in relation to Section 1, Rule 126). Here he does not suffer from any disqualification as already found by said justice of the peace when counsel for the accused made an attempt to do so. And so he considers the orders of respondents decreeing his relief unauthorized they being an undue encroachment on the exercise by him of his official and quasi-judicial function directly interwoven with cases which were entrusted to him to prosecute. It is his contention that the power of control and supervision that the Secretary of Justice exercises over a public prosecutor merely extend to administrative matters and not to those which pertain to the handling or prosecution of cases already pending in court. In other words, he contends that once a fiscal has taken action on a case by filing the necessary information he cannot be relieved therefrom except for any ground that may constitute a legal disqualification. To hold otherwise would be to subvert the judicial duties of a fiscal to the detriment of public interest."

In the light of these facts, this Court ruled thru Mr. Justice Felix Bautista Angelo thus:

"x x x [T]hat once a public prosecutor has been entrusted with the investigation of a case and has acted thereon by filing the necessary information in court he is by law in duty bound to take charge thereof until its final termination, for under the law he assumes full responsibility for his failure or success since he is the one more adequately prepared to pursue it to its termination. This is more so when the attempt to relieve him is motivated by reasons that are not compatible with sound administration of justice. x x x."

This decision is of no help to petitioner. To start with, Section 1679 was neither invoked nor applied in the *Salcedo* case. The events that happened there relative to the attempts to relieve Fiscal *Salcedo* from handling the prosecution in question therein are related in detail in the decision:

"That on November 29, 1961, two informations signed by the petitioner were filed before the Justice of the Peace Court of Jolo charging Lt. Romeo Reciña, Sgt. Torino and Pfc. Sa-nugal with less serious physical

in-juries and arbitrary detention;

"That these charges were dismissed by the Justice of the Peace Court on February 6, 1962;

"That on October 2, 1962, Lt. Ro-meo Reciña, one of the accused addressed a letter to the respondents complaining that petitioner Salcedo has shown over enthusiasm and unusual interest in the prosecution of the case against him;

"That on October 16, 1961, the aggrieved party Sgt. Andres Lopez, wrote a letter to the respondent Provincial Fiscal asking that the case be handled by the military court;

"That on the same date, October 16, 1961, the PC Provincial Commander of Sulu, Mamarinto B. Lao, addressed a letter to the Provincial Fiscal of Jolo requesting that the investigation of the Reciña case be stopped in order to avoid duplication and to allow his command full control of the investigation as they involved persons subject to military law;

"That on October 18, 1962, the letter of complaint of Lt. Reciña was indorsed to petitioner for his comment;

"That on October 24, 1962, Atty. Asclepiades Valbuena sent a wire to respondent Secretary of Justice requesting that either Fiscal Paulete or Coscolluela be assigned to prosecute the case against Lt. Reciña;

"That on October 26, 1962, in an information filed by the petitioner, Lt. Reciña, Sgt. Torino and Pfc. Sanugal were charged again before the Justice of the Peace Court of Jolo with assault upon an agent of a person in authority (Criminal Case No. 9582);

"That on October 30, 1962, the respondents received telegrams from Gov. Abubakar and Atty. Valbuena requesting the relief of the petitioner Fiscal Salcedo from prosecuting the case against Lt. Reciña;

"That on October 31, 1962, respondent Agapito Conchu, Chief of the Prosecuting Division, sent a wire to Fiscal Coscolluela instructing him to take over the case against Lt. Reciña;

"That on November 12, 1962, Fiscal Coscolluela wired the respondent Chief Prosecutor Conchu informing him that petitioner Salcedo refused to yield the prosecution of the case of Reciña until legally disqualified from handling the same;

"That on the same date November 12, 1962, another telegram was sent to Fiscal Salcedo by respondent Secretary Liwag requesting him to turn over the Reciña case to Fiscal Coscolluela immediately;

"That on November 17, 1962, Atty. Asclepiades Valbuena of Jolo sent a wire to respondent Secretary of Justice reiterating request for the relief of Fiscal Salcedo;

"That on November 23, 1962, another wire was sent to the petitioner Fiscal Salcedo advising him to transfer the Reciña case to the Department;

"That on January 11, 1963, Congressman Ututalum sent a letter to respondent Secretary of Justice requesting that the petitioner Salcedo be disqualified from prosecuting the Reciña case;

"That on January 31, 1963, another letter was sent by Congressman Cesar Fortich to respondent Secretary of Justice requesting also for the relief of petitioner Salcedo from the prosecution of the Reciña case;

"That on February 4, 1963, another telegram was sent to respondent Fiscal Paulete by respondent Conchu ordering him to have Fiscal Coscolluela handle the Reciña case;

"That on February 6, 1963, another telegram was sent to respondent Paulete confirming previous wire of respondent Secretary Liwag directing him to have petitioner Salcedo turn over Reciña case to Fiscal Coscolluela;

"That on February 7, 1963, another telegram was sent to respondent Pau-lete directing him to take over the Reciña case;

"That in view of the repeated re-fusal of petitioner to turn over the Reciña case to respondent Paulete, on February 8, 1963, another telegram was sent to Fiscal Paulete requesting that the postponement of the said case be asked as the respondent Chief Prosecuting Attorney Conchu would arrive on February 12, 1963;

"That pursuant to the Department of Justice, Administrative Order No. 67 issued on February 9, 1963, Chief Prosecuting Attorney Conchu went to Jolo to confer with petitioner Salcedo;

"That respondent Conchu told petitioner Salcedo that it would be better if he would turn over the Reciña case to respondent Provincial Fiscal Pau-lete and made it clear to him that the Secretary of Justice has no intention of relieving him from prosecuting this case as he would continue assisting the respondent Paulete in the prosecution panel;

"That petitioner Salcedo finally agreed to turn over the Reciña case to respondent Paulete and for him to assist the latter in the prosecution of the case and to handle the cross-examination of the witnesses;

"That in spite of this agreement petitioner still refused to turn over the case to respondent Paulete and on March 21, 1963 he filed this petition with this Honorable Court;"

It is clear from this narration that at no time was Section 1679 ever made use of by Secretary Liwag. All the attempts to relieve Fiscal Salcedo were merely direct orders for him to allow another fiscal to prosecute the case in his place or, at least, in collaboration with him. In other words, the statutory procedure was not followed and, naturally, the fiscal had more than enough reason to stand his ground. To be sure, Secretary Liwag could not have invoked Section 1679 with propriety. Said section covers only instances where the fiscal "shall be unable or shall fail to discharge any of the duties of his position". Far from being unable to discharge the duties of his office or from failing in doing so, Salcedo was performing them, and actually insisting to be allowed to continue performing his task, but, of course, apparently against the wishes and interests of higher officials who obviously had no business to interfere with the prosecution of offenses or who were, at the very least, acting, in the language of Justice Felix Bautista Angelo, for "purposes not in line with the interests of justice".

Indeed, this is apparent from the fact that the reason alleged for the relief of Salcedo was possible "unusual interest in the conviction of (the then accused) Lt. Reciña because of a supposed rivalry over a woman". It would seem then that the relief was being sought in the interest of the accused, if not directly to insure his acquittal. If this were not so, there was no need to relieve Salcedo; after all, the evidence he was presenting or about to present to the court had to be evaluated by the judge, and it would not have been difficult for the court to determine if the prosecution of the accused was being done in bad faith; and, if so, acquittal would naturally follow; but if the evidence the fiscal was good, the protestations of concern of those asking for the relief of the fiscal could not have in anyway augmented the possibility of conviction.

There was, therefore, ample ground to withhold sanction from Secretary Liwag's instructions in the Salcedo case. As Justice Bautista Angelo very aptly put it, "Once a public prosecutor has been entrusted with the investigation of a case and has acted thereon by filing the necessary information in court, he is by law in duty bound to take charge thereof until its final termination, for under the law he assumes full responsibility for his failure or success since he is the one more adequately prepared to pursue it to its termination. This is more so when the attempt to relieve him is motivated by reasons that are not compatible with sound administration of justice." Since the court had already acquired jurisdiction over the case, the full control thereof, even as to whether or not the prosecution should continue, rested with the court rather than the fiscal. The protection and promotion of the interests of justice had in a large sense passed from the fiscal to the court. Hence, at such juncture, it would have

been virtually pointless for the Secretary to have invoked advisability in the public interest, to justify any attempt to avail of Section 79(c).

The case at bar is entirely different. Contrary to the contention of the petitioner, the Provincial Fiscal of Rizal refused to act. He refused to conduct any investigation of petitioner of the charge against him, alleging a supposed legal impediment which, at best, was erroneous. He claimed that a prejudicial question existed, but it is settled that the matter of prejudicial questions cannot be resolved by fiscals but by the court after the corresponding information has already been filed.[2]

The inability or failure of the fiscal to act contemplated in Section 1679 has no reference to physical incapacity or legal disqualification for these are actually governed by routinary office procedures and the usual rules of official succession. What the provision envisages are precisely those situations, like the one at bar, wherein the fiscal refuses or fails to act because of his own honest personal or official opinion, correct or incorrect, regarding the case assigned to him, which is adverse to the interests of the people. The State, with the whole retinue of officials available to it in the service of its interests, is not expected to be rendered helpless in prosecuting an offense only because of the views of a single subordinate official.

To the possible contention that it is an inconsistency to recognize, on the one hand, the pervasive power over fiscals of the Secretary of Justice as Department Head and alter ego of the President and at the same time admit his impotency to directly substitute his discretion and judgment for that of a fiscal, in the same manner as with respect to those of other subordinates, the answer is that, within the concept of the rule of law, it is not obnoxious but, on the contrary, salutary, that constitutional power be as much as possible exercised along statutory lines directed towards the more orderly and expeditious accomplishment of the reason for which such power exists and which lines, after all, do not substantially impair the power itself; for truly, in the legal order conceived and implicit in any constitutional system of government, there should be no room for absolute arbitrariness or the imposition of naked power solely for its own sake. The strong executive type of government under our Constitution is awesome enough, what with the feeling of apprehension it has been causing in some sectors, especially among those who disdain every possibility of any kind or degree of dictatorship, without the need of making the President's constitutional authority entirely immune from legislative delineation along areas that do not detract from its substantiality but intended rather to promote good government and to apply sound principles in the handling of governmental functions. Thus, as already explained, under the provisions of Sections 1679 and 1686 of the Revised Administrative Code, the Executive's power of supervision and control over fiscals is given practically undiminished effect but, at the same time, no fiscal has to yield to the Secretary or to anyone his judgment and conviction which are priceless for his self-respect and dignity as a person and as an official of the government. After all, it is to be assumed that, in accordance with the usual norm of conduct observed in cases of such nature, the Secretary would never act precipitately and would always give the fiscal sufficient opportunity to explain his views and position before any of the above provisions are called into play. Indeed, such is the only way of avoiding any suspicion that fiscals are being relieved merely at the say-so of influential politicians.

In view of all the foregoing considerations, it is the ruling of this Court that under Sections 1679 and 1686 of the Revised Administrative Code, in any instance where a provincial or city fiscal fails, refuses or is unable, for any reason, to investigate or prosecute a case and, in the opinion of the Secretary of Justice it is advisable in the public interest to take a different course of action, the Secretary may either appoint as acting provincial or city fiscal, to handle the investigation or prosecution exclusively and only of such case, any practicing attorney or some competent officer of the Department of Justice or office of any city or provincial fiscal, with complete authority to act therein in all respects as if he were the provincial or city fiscal himself, or appoint any lawyer in the government service or not in the government service, temporarily to assist such city or provincial fiscal in the

discharge of his duties, with the same complete authority to act independently of and for such city or provincial fiscal, provided that no such appointment may be made without first hearing the fiscal concerned and never after the corresponding information has already been filed with the court by the corresponding city or provincial fiscal without the conformity of the latter, except when it can be patently shown to the court having cognizance of the case that said fiscal is intent on prejudicing the interests of justice. The same sphere of authority is true with the prosecutor directed and authorized under Section 3 of Republic Act 3783, as amended and/or inserted by Republic Act 5184. The observation in *Salcedo vs. Liwag*, supra, regarding the nature of the power of the Secretary of Justice over fiscals as being purely "over administrative matters only" was not really necessary, as indicated in the above relation of the facts and discussion of the legal issues of said case, for the resolution thereof. In any event, to any extent that the opinion therein may be inconsistent herewith, the same is hereby modified.

IN CONSEQUENCE, the judgment of the court a quo is affirmed, with costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

[1] *Bagatua, Maddela, Zulueta*, supra, and also *Guiao vs. Figueroa*, 94 Phil. 1018 and *Salcedo vs. Liwag*, 9 SCRA 609, G. R. No. L-21068, Nov. 29, 1963.

[2] Sec. 5, Rule 111; *Dasalla vs. City Attorney*, G. R. No. L-17338, May 30, 1962, 5 SCRA 193.

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